

ADDENDUM TO KCLM
LEGISLATIVE CHANGES SB 192 HEROIN BILL

KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by administrative regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: **Acetylfentanyl**; Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrophan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacilmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine;

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218A.133 Exemption from prosecution for possession of controlled substance or drug paraphernalia if seeking assistance with drug overdose (**New Statute**)

(1) As used in this section:

(a) "Drug overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe requires medical assistance; and

(b) "Good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant, or search warrant, or a lawful search.

(2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if:

(a) In good faith, medical assistance with a drug overdose is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner because the person:

- 1. Requests emergency medical assistance for himself or herself or another person; or**
- 2. Acts in concert with another person who requests emergency medical assistance; or**
- 3. Appears to be in need of emergency medical assistance and is the individual for whom the request was made;**

(b) The person remains with, or is, the individual who appears to be experiencing a drug overdose until the requested assistance is provided; and

(c) The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

(3) The provisions of subsection (2) of this section shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section.

(4) When contact information is available for the person who requested emergency medical assistance, it shall be reported to the local health department. Health department personnel shall make contact with the person who requested emergency medical assistance in order to offer referrals regarding substance abuse treatment, if appropriate.

(5) A law enforcement officer who makes an arrest in contravention of this section shall not be criminally or civilly liable for false arrest or false imprisonment if the arrest was based on probable cause.

218A.1410 Importing Heroin (New Statute)

(1) A person is guilty of importing heroin when he or she knowingly and unlawfully transports any quantity of heroin into the Commonwealth by any means with the intent to sell or distribute the heroin.

(2) The provisions of this section are intended to be a separate offense from others in this chapter, and shall be punished in addition to violations of this chapter occurring during the same course of conduct.

(3) Importing heroin is a Class C felony, and the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least fifty percent (50%) of the sentence imposed.

KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in:

(a) Four (4) grams or more of cocaine;

(b) Two (2) grams or more of heroin, **fentanyl**, or methamphetamine;

(c) Ten (10) or more dosage units of a controlled substance that is classified in Schedules I or II and is a narcotic drug, or a controlled substance analogue;

(d) Any quantity of lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers; or

(e) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.

(2) The amounts specified in subsection (1) of this section may occur in a single transaction or may occur in a series of transactions over a period of time not to exceed ninety (90) days that cumulatively result in the quantities specified in this section.

(3) (a) [Except as provided in paragraph (b) of this subsection,]Any person who violates the provisions of subsection (1)(a), (b), (c), or (d) of this section shall be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

(b) Any person who violates the provisions of subsection (1)(e) of this section:

1. Shall be guilty of a Class D felony for the first offense and a Class C felony for a second[offense] or subsequent offense; and

2. a. Except as provided in subdivision b. of this subparagraph, where the trafficked substance was heroin and the defendant committed the offense while possessing more than one (1) items of paraphernalia, including but not limited to scales, ledgers, instruments and material to cut, package, or mix the final product, excess cash, multiple subscriber identity modules in excess of the number of communication devices possessed by the person at the time of arrest, or weapons, which given the totality of the circumstances, indicate the trafficking to have been a commercial activity, shall not be released on parole until he or she has served at least fifty percent (50%) of the sentence imposed.

b. This subparagraph shall not apply to a person who has been determined by a court to have had a substance use disorder relating to a controlled substance at the time of the offense. "Substance use disorder" shall have the same meaning as in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(c) Any person convicted of a Class C felony offense or higher under this section shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed in cases where the trafficked substance was heroin.

218A.142 Aggravated trafficking in controlled substance in first degree (**New Statute – Note:** The General Assembly did not create any other degrees of this offense.)

(1) A person is guilty of aggravated trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in one hundred (100) grams or more of heroin.

(2) Aggravated trafficking in a controlled substance in the first degree is a Class B felony, and the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least fifty percent (50%) of the sentence imposed.

KRS 218A.1414 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the third degree when he or she knowingly and unlawfully traffics in:

(a) Twenty (20) or more dosage units of a controlled substance classified in Schedules IV or V; or

(b) Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amount specified in that paragraph.

(2) (a) Any person who violates the provisions of subsection (1)(a) of this section shall be guilty of:

1. A Class A misdemeanor for a[the] first offense *involving one hundred twenty (120) or fewer dosage units;*

2. *A Class D felony for a first offense involving more than one hundred twenty (120) dosage units;*

and

3. A Class D felony for a second or subsequent offense.

(b) Any person who violates the provisions of subsection (1)(b) of this section shall be guilty of:

1. A Class A misdemeanor for the first offense, subject to the imposition of presumptive probation;
and

2. A Class D felony for a second or subsequent offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years.

KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

(1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and

(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.

(2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(5) **(a) This section shall not prohibit a local health department from operating a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes.**

(b) To operate a substance abuse treatment outreach program under this subsection, the local health department shall have the consent, which may be revoked at any time, of the local board of health and:

1. The legislative body of the first or home rule class city in which the program would operate if located in such a city; and

2. The legislative body of the county, urban-county government, or consolidated local government in which the program would operate.

(c) Items exchanged at the program shall not be deemed drug paraphernalia under this section while located at the program.

(6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace officer may inquire as to the presence of needles or other sharp objects in the areas to be searched that may cut or puncture the officer and offer to not charge a person with possession of drug paraphernalia if the person declares to the officer the presence of the needle or other sharp object. If, in response to the offer, the person admits to the presence of the needle or other sharp object prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or

sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object.

(b) The exemption under this subsection shall not apply to any other drug paraphernalia that may be present and found during the search or to controlled substances present in other than residual or trace amounts.

(7) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.